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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/607,902	06/26/2003	Jeffrey Sutton	DEP5114	7208

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EXAMINER	
PEFFLEY, MICHAEL F	
ART UNIT	**PAPER NUMBER**
3739	

DATE MAILED: 08/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/607,902	SUTTON, JEFFREY	
	Examiner	Art Unit	
	Michael Peffley	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-18,71 and 75* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-18, 71 and 75* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

Applicant's amendments and remarks of June 17, 2005 have been fully considered by the examiner. In particular, it is noted that applicant has indicated that the response was to a final rejection of the claims. However, the claims were not finally rejected in the Office action of May 27, 2005. That action was non-final (see Office Action Summary box 2(b) and page 2 of the Office action). The instant Office action, however, is a final action necessitated by the amendment.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

Claims 71 and 75 are rejected under 35 U.S.C. 102(e) as being anticipated by Panescu et al (6,895,267).

Panescu et al disclose a therapeutic probe that includes an elongate member having proximal (34) and distal (36) ends, and a longitudinal portion supporting energy delivery members (33,35,37). Panescu et al specifically teach that the energy delivery members may be selected from a number of types, including ultrasound transducers (col. 3,lines 15-17). The longitudinal portion is round having an axial cross section inherently creating top, bottom, front and back portions (i.e. 90 degree sections of the catheter). The longitudinal section may also be provided in a helical shape (Figure 2b).

Claim Rejections - 35 USC § 103

Claims 11-14, 17, 18, 71 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobak, III et al ('804) in view of the teaching of Knowlton (6,427,089).

The Dobak, III et al device has been previously addressed. Dobak, III et al teach that the probe may be used to heat and cool tissue (see Title), but only discloses the use of a fluid for performing this function. In particular, there is no specific disclosure in Dobak, III et al of using ultrasound transducers to heat tissue. Rather, only the use of a heating/cooling fluid is disclosed for transferring energy to tissue.

Knowlton also discloses a heat transfer catheter similar to the Dobak, III et al device. It includes a catheter with a distal heat transfer section (i.e. balloon). In particular, Knowlton teaches that it is known to use heated and cooled fluid to treat tissue, just as in the Dobak, III et al system. Knowlton further teach that alternative energy sources, including the use of ultrasonic transducers, may be used to provide heat energy to tissue (col. 8, lines 48-65). The examiner maintains that Knowlton teaches the use of many known energy sources to provide heat energy to tissue.

To have provided the Dobak, III et al device with ultrasonic transducers to provide heat energy to a fluid within the heat transfer catheter would have been an obvious modification for one of ordinary skill in the art, particularly since Knowlton teaches of the known use of such alternative energy sources to provide heat energy to heat transfer catheters.

Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dobak, III et al ('804) in view of the teaching of Hilal (5,411,509).

The Dobak, III et al device has been addressed previously. While Dobak, III et al disclose a helical shaped balloon member, there is no specific teaching of providing this portion with a malleable foam portion.

As discussed in the previous Office action, Hilal teaches of providing a foam portion on a catheter to allow the catheter to be shaped as desired without overinflating or puncturing.

To have provided the Dobak, III et al device with a malleable, foam material to provide a more resilient balloon member would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Hilal.

Response to Arguments

Applicant's arguments filed June 17, 2005 have been fully considered but they are not persuasive.

First, it is noted that applicant has not addressed the 35 USC 102 rejection of claims 71 and 75 as being anticipated by Panescu et al. This rejection is deemed tenable and is maintained for the same reasons set forth in the previous Office action.

With respect to the combination of the Dobak reference with the Knowlton teaching, applicant contends that there is nothing in Dobak's description that shows a means for heating a working fluid within the catheter and that one of ordinary skill in the art would provide an ultrasonic heating device in the working fluid supply. Further applicant contends that Knowlton does not cure the deficiency since Knowlton does not heat a fluid located within a balloon.

The examiner agrees with applicant's contention that the Dobak fluid is heated externally of the balloon segment and is then delivered to the balloon. However, it is noted that Knowlton also teaches the use of such a heating means (col. 8, lines 54-60, "(iv) a heated fluid coupled to a catheter..."). So, both the Knowlton and Dobak references disclose a heat transfer catheter that provides either a heated or cooled fluid coupled to a distal balloon member. Knowlton further discloses the use of an ultrasound emitter located within the balloon (i.e. element 16) to delivery heat energy to tissue. The examiner maintains that it would have been an obvious modification to have provided such an ultrasonic heating means in the Dobak balloon member to heat tissue, and that such an ultrasonic heating means would not have to heat the fluid within the balloon in view of the teaching of Knowlton. Both the Dobak and Knowlton catheters are "heat transfer catheters", and the examiner maintains that Knowlton provides a direct teaching of substituting a heating ultrasound emitter in a balloon in lieu of a circulated fluid, and such a teaching would motivate one of ordinary skill in the art to consider such a modification of the Dobak reference.

Finally, it is also noted that applicant has not specifically addressed the obviousness rejection further including the Hilal teaching. Again, this rejection is deemed tenable and is also maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Peffley
Primary Examiner
Art Unit 3739

mp
August 29, 2005